

**South Carolina General Assembly**  
122nd Session, 2017-2018

**H. 4796**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. McCoy, J.E. Smith, Arrington, Ballentine, Clary, Huggins and Mace

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Companion/Similar bill(s): 890

Introduced in the House on January 31, 2018

Currently residing in the House Committee on **Judiciary**

Summary: Energy

**HISTORY OF LEGISLATIVE ACTIONS**

| Date      | Body  | Action Description with journal page number   |
|-----------|-------|---|
| 1/31/2018 | House | Introduced and read first time ( <a href="#">House Journal-page 71</a> )            |
| 1/31/2018 | House | Referred to Committee on <b>Judiciary</b> ( <a href="#">House Journal-page 71</a> ) |
| 2/20/2018 | House | Member(s) request name added as sponsor: Clary                                      |
| 3/8/2018  | House | Member(s) request name added as sponsor: Huggins                                    |
| 3/12/2018 | House | Member(s) request name added as sponsor: Mace                                       |

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**VERSIONS OF THIS BILL**

[1/31/2018](#)

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9 **A BILL**

10  
11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, BY ADDING CHAPTER 41 TO TITLE 58 SO AS TO  
13 PROVIDE FOR THE PROCUREMENT OF LOWEST-COST  
14 ENERGY FROM INDEPENDENT POWER PRODUCERS; AND  
15 TO AMEND SECTION 58-39-120, RELATING TO THE  
16 DEFINITIONS OF TERMS APPLICABLE TO CHAPTER 39,  
17 TITLE 58, SO AS TO REVISE THE DEFINITIONS OF "AC"  
18 AND "AVOIDED COSTS".  
19

20 Be it enacted by the General Assembly of the State of South  
21 Carolina:  
22

23 SECTION 1. Title 58 of the 1976 Code is amended by adding:  
24

25 "CHAPTER 41

26  
27 Procurement of Lowest-Cost Energy from Independent Power  
28 Producers  
29

30 Section 58-41-10. This chapter may be cited as the 'Energy  
31 Freedom Act.'  
32

33 Section 58-41-20. As used in this chapter:

34 (1) 'AC' means alternating current as measured at the point  
35 of interconnection of the small power producer's facility to the  
36 interconnecting electrical utility's transmission or distribution  
37 system.

38 (2) 'Avoided costs' means an electrical utility's most  
39 recently approved or established avoided cost rates in this State for  
40 purchases of electricity from qualifying facilities pursuant to  
41 Section 210 of the Public Utility Regulatory Policies Act and this  
42 chapter.

1 (3) 'Commission' means the South Carolina Public Service  
2 Commission.

3 (4) 'Electrical utility' must be defined as set forth in Section  
4 58-27-10(7), except that electrical utilities serving less than one  
5 hundred thousand customer accounts must be exempt from the  
6 provisions of this chapter.

7 (5) 'PURPA' means the Public Utility Regulatory Policies  
8 Act of 1978, as amended.

9 (6) 'Small power producer' means a person or corporation  
10 owning or operating a 'qualifying small power production facility'  
11 as defined in 16 U.S.C., Section 796, as amended.

12 (7) 'Standard offer' means avoided cost rates and power  
13 purchase agreement terms and conditions approved by the  
14 commission and applicable to purchases of energy and capacity by  
15 electrical utilities as provided in this chapter from small power  
16 producers up to five megawatts AC in size.

17  
18 Section 58-41-30. (A) The commission shall conduct a  
19 proceeding no later than ninety days after the effective date of this  
20 act, and at least every two years after that, to review and approve  
21 electrical utilities' avoided cost methodologies, standard offers,  
22 and adherence to commission-approved interconnection standards  
23 and this chapter and to form power purchase agreements consistent  
24 with PURPA. These proceedings must be separate from the  
25 electrical utilities' annual fuel cost proceedings pursuant to Section  
26 58-27-865 and shall include an opportunity for intervention,  
27 discovery, testimony, and an evidentiary hearing.

28 (B) In approving the avoided cost methodology, standard offer,  
29 and form contract for each electrical utility, the commission shall  
30 ensure, to the extent possible, that small power producers are  
31 treated on a fair and equal footing with electrical utility-owned  
32 resources through the provision of rates for the purchase of energy  
33 and capacity that fully and accurately reflect the electrical utility's  
34 avoided costs and power purchase agreement terms and conditions  
35 that are commercially reasonable and provide the small power  
36 producer a reasonable opportunity to attract capital. The  
37 commission also shall ensure that each electrical utility's avoided  
38 cost methodology fairly accounts for costs avoided by the  
39 electrical utility if the small power producer's facility includes  
40 energy storage equipment. Avoided cost methodologies proposed  
41 by electrical utilities and approved by the commission may account  
42 for differences in costs avoided based on the geographic location  
43 and resource type of a small power producer's facility.

1 (C) Every six months, each electrical utility shall submit to the  
2 commission for approval updates to the inputs used to calculate its  
3 standard offer avoided cost rates based on the commission's  
4 approved avoided cost methodology. After providing interested  
5 parties the opportunity to participate fully in the proceeding, the  
6 commission shall establish updated standard offer avoided cost  
7 rates for the electrical utility.

8 (D) The avoided cost rates offered by an electrical utility to a  
9 small power producer not eligible for the standard offer must be  
10 calculated based on the avoided cost methodology approved by the  
11 commission in its most recent proceeding. In the event that a small  
12 power producer and an electrical utility are unable to mutually  
13 agree on an avoided cost rate, the small power producer has the  
14 right to have any disputed issues resolved by the commission  
15 through arbitration or in a formal complaint proceeding.

16 (E) In each proceeding required by this chapter, the  
17 commission shall approve a standard offer power purchase  
18 agreement to be used by each electrical utility in purchasing  
19 energy, capacity, and other related services from small power  
20 producers eligible for the standard offer. In addition, the  
21 commission shall require either the use of the standard offer power  
22 purchase agreement or approve a separate form power purchase  
23 agreement to be used by each electrical utility in purchasing  
24 energy, capacity, and other related services from small power  
25 producers not eligible for the standard offer. The standard offer  
26 and form power purchase agreements approved by the commission  
27 pursuant to this section shall have an initial term of at least fifteen  
28 years, or longer if the commission deems it necessary in order to  
29 comply with subsection (B), and shall provide the small power  
30 producer the option of selling the output of its facility to the  
31 electrical utility at rates fixed for the initial term of the agreement.

32 (F) In no event shall a power purchase agreement approved by  
33 the commission or offered by an electrical utility to a small power  
34 producer allow:

35 (1) for curtailment by the electrical utility of generation from  
36 the small power producer's facility for any reason other than a  
37 system emergency as defined in PURPA and the PURPA  
38 regulations of the Federal Energy Regulatory Commission;

39 (2) the electrical utility to terminate the power purchase  
40 agreement or collect damages from the small power producer due  
41 to a delay in achieving commercial operation of the small power  
42 producer's facility if the delay is due to the electrical utility's delay

1 in connecting the facility to its transmission or distribution system;  
 2 or

3 (3) the electrical utility to charge, or reduce the price paid to,  
 4 the small power producer based on costs incurred by the electrical  
 5 utility to respond to the intermittent nature of electrical generation  
 6 by the small power producer, which costs must be recoverable by  
 7 the electrical utility as part of its annual fuel cost proceedings  
 8 pursuant to Section 58-27-865.

9 (G) An electrical utility's standard offer avoided cost rates  
 10 approved by the commission pursuant to this chapter shall serve as  
 11 the electrical utility's avoided costs for the purpose of recovering  
 12 fuel costs associated with an approved distributed energy resource  
 13 plan as required pursuant to Section 58-27-865.”

14  
 15 SECTION 2. Section 58-39-120(A) and (B) of the 1976 Code is  
 16 amended to read:

17  
 18 “(A) ‘AC’ means alternating current, as measured at the point of  
 19 interconnection of the ~~renewable energy~~ small power producer's  
 20 facility to the interconnecting electrical utility's transmission or  
 21 distribution system.

22 (B) ‘Avoided costs’ means ~~payments for purchases of~~  
 23 ~~electricity made according to an electrical utility's most recently~~  
 24 ~~approved or established avoided cost rates in this State or rates~~  
 25 ~~negotiated pursuant to PURPA, in the year the costs are incurred,~~  
 26 ~~for purchases of electricity from qualifying facilities pursuant to~~  
 27 ~~Section 210 of the Public Utility Regulatory Policies Act, said~~  
 28 ~~costs to be calculated as set forth in Section 58-39-140(A)(1)~~ costs  
 29 as defined pursuant to Section 58-41-20(2).”

30  
 31 SECTION 3. This act takes effect upon approval by the Governor.

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